IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 10 of 2005

BHAGWANDAS
V/S
SHANTI DEVI

Mr. OM MEHTA, for the appellant / petitioner

Mr. RK THANVI, for the respondent

Date of Order : 4.7.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

It is informed by learned counsel for the respondent that possession of the property has already been taken way-back in September 2005. Be that as it may, notwithstanding that, I have heard learned counsel on the merits of the appeal.

It is pointed out by learned counsel for the appellant, that the learned Courts below were wrong in striking out the defence of the appellant against eviction, as he has deposited the determined amount within the extended time.

In my view, a look at the facts of the case shows, that the suit was filed on the basis of the default in payment of rent for the period 1.2.83 to 31.10.83. Admittedly, on the side of the appellant, the only tender of rent that was made was, for the first time on 16.5.83,

vide Ex.A-12, by which time the rent for the period of three months had already become due. Then the second tender was made vide Ex.A-13 on 6.12.83.

Learned counsel was pointedly asked to show, as to whether the landlord is under obligation to receive the money-order after the rent for certain period has fallen in default, and if the landlord fails to receive the first money-order sent on 16.5.83, can it be said that the tenant becomes entitle to enjoy holiday in depositing the rent in the bank account of the landlord, or depositing in the Court in accordance with the other provisions of Section 19A, and the learned counsel for the appellant was not able to satisfy in his favour. In that view of the matter, in view of the judgment of this Court in Jagan Nath Vs. Heera Chand reported in 2001(1) DNJ (Raj.) 431, even if it is assumed that the defence was wrongly struck off, still when the default is established to have been committed before filing of the suit, the tenant cannot get the benefit of Section 13(6) of the Act, and therefore, I do not find any sufficient ground to interfere with the impugned decree for eviction.

The appeal thus, does not involve any substantial question of law. The same is, therefore, dismissed summarily.

(N P GUPTA),J.

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